

REMARKS

Applicant respectfully requests reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow. Claims 9, 11-15, 19, and 20 have been rejected and Claims 16-18 have been objected to by the Examiner. Claims 9, 11, 17, and 20 have been amended, and no new matter has been added. Accordingly, Claims 9 and 11-20 will be pending in the present Application upon entry of this Reply and Amendment.

A detailed listing of all claims that are, or were, in the Application, irrespective of whether the claim(s) remain under examination in the Application, is presented, with an appropriate defined status identifier.

Claim Objections

On page 2, the Examiner objected to informalities in Claims 17 and 20. Claims 17 and 20 have been amended based on the Examiner's suggestions. Entry of these amendments and reconsideration and withdrawal of the objections to Claims 17 and 20 is respectfully requested.

On pages 6-7 of the Office Action, the Examiner stated that Claims 16-18 are allowable over the prior art of record if rewritten in independent form. While the Applicant agrees that Claims 16-18 recite a combination of subject matter that is patentable over the cited references, such claims have not been rewritten in independent form at this time. Applicant does not necessarily agree with or acquiesce in the statement of reasons for allowance given by the Examiner. Moreover, the Applicant notes that the recited subject matter as well as various other subject matter and/or combinations of subject matter may be patentable for other reasons than those given by the Examiner. The Applicant expressly reserves the right to set forth additional and/or alternative reasons for patentability and/or allowance with the present Application or in any other future proceeding.

Claim Rejections – 35 U.S.C. § 103

On pages 2, 4 and 6 of the Office Action, the Examiner rejected Claims 9 and 11, along with various dependent claims, under 35 U.S.C. § 103(a). Claim 9 was rejected as being unpatentable over U.S. Patent Appl. Pub. No. 2002/0101243 to Mentgen et al. (“Mentgen”) in view of U.S. Patent No. 5,949,217 to Okada et al. (“Okada”) and U.S. Patent Appl. Pub. No. 2005/0089750 to Ng et al. (“Ng”). Claims 11-15 were rejected as being unpatentable over Mentgen in view of U.S. Patent No. 5,381,096 to Hirzel (“Hirzel”) and Ng. Claims 19-20 were rejected over Mentgen in view of Okada and Ng and further in view of Hirzel. These rejections should be withdrawn, because the cited references fail to disclose, teach, or suggest the claimed invention.

Applicant respectfully submits that the combination of the cited references would not result in the subject matter recited in independent Claims 9 and 11 (as amended) because Mentgen in combination with any of the other cited references does not disclose, teach or suggest “determining the charge drawn as a function of an exponential function with a time constant and a charging time from the start of the drawing of the charge,” as recited in amended independent Claims 9 and 11.

For example, in contrast to the “monitoring device” or “computer program” recited in amended Claims 9 and 11 respectively, Mentgen does not disclose, teach, or suggest determining a charge drawn by utilizing an exponential function that depends on the charging time. In contrast, Mentgen discloses the use of an exponential function that depends on the duration of a resting phase prior to the measurement and a time constant of the transient response of no-load voltage (see Mentgen, paragraph [0017]). The usage of this exponential configuration creates a weighting factor (see Mentgen, paragraphs [0007] and [0009]). Mentgen states that “[w]eighting factor gew is selected as a function of an accuracy, in particular a known or estimated accuracy, of open-circuit voltage U_r thus determined, which in turn depends on duration T_r of the resting phase.” (Mentgen, paragraph [0017]). Mentgen does not disclose, teach or suggest determining a charge drawn by utilizing an exponential function that depends on the charging time.

The Examiner has cited to no teaching in the prior art where “determining the charge drawn as a function of an exponential function with a time constant and a charging time from the start of the drawing of the charge,” is disclosed, taught or suggested. The Examiner's failure to provide a citation to the art of record is not surprising, because the only evidence in the record of a teaching of such a feature is contained in the present Application. Of course, any reliance on the present Application would constitute impermissible hindsight reasoning.

The Applicant respectfully requests withdrawal of the rejection of amended Claims 9 and 11, since Mentgen in combination with any of the other cited references does not disclose, teach, or suggest “determining the charge drawn as a function of an exponential function with a time constant and a charging time from the start of the drawing of the charge.”

Applicant respectfully submits that the subject matter recited in independent Claims 9 and 11, as amended, and the claims which are dependent thereon, would not have been obvious to a person of ordinary skill in the art and are patentable.

Claims 12-20 depend variously from Claims 9 and 11 and are allowable therewith, for at least the reasons set forth above, without regard to the further patentable limitations set forth in such claims. Reconsideration and withdrawal of the rejection of Claims 9 and 11-20 is respectfully requested.

* * *

It is submitted that each outstanding objection and rejection to the Application has been overcome, and that the Application is in a condition for allowance. The Applicant requests consideration and allowance of all pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present Application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this Application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to



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Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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By 

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